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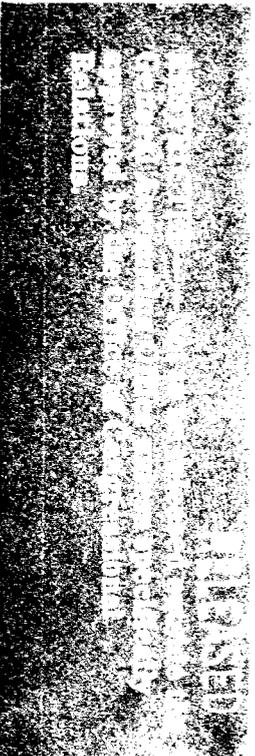
Report to Congressional Requesters

September 1991

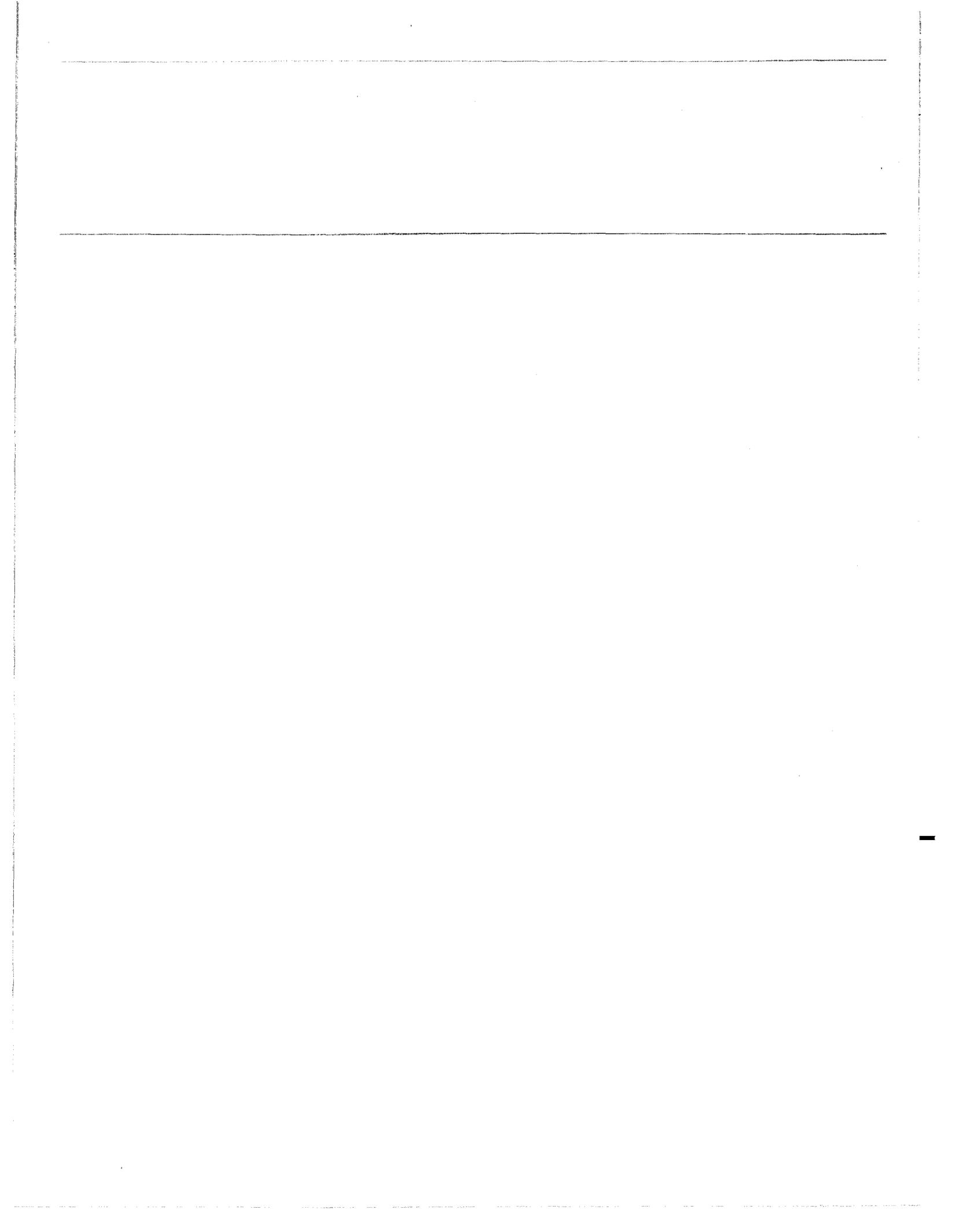
**NUCLEAR HEALTH
AND SAFETY
Workers'
Compensation Rights
Protected at Hanford**



145012



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United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-245018

September 10, 1991

The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

The Honorable Brock Adams
United States Senate

Since 1943 the Washington State Department of Labor and Industries has had a contract with the Department of Energy (DOE) or its predecessor organizations to administer a self-insured workers' compensation/pension program for contractor employees at DOE's Hanford Site near Richland, Washington.¹ You were concerned whether the contract's implementation could have prevented Hanford employees from filing workers' compensation claims for radiation-related injuries or occupational diseases resulting from their employment at the Hanford Site. To respond to your concern, as agreed with your office, we reviewed (1) the procedures used for filing claims, (2) the provisions of the current and previous contracts, (3) the claims records at the state and at Hanford for radiation exposures, and (4) the state's recent report on its analysis of the DOE contract and its administration of the program.

Results in Brief

The procedures since the late 1950s for filing workers' compensation claims contain sufficient checks and balances to ensure that workers' claims cannot be blocked by DOE. This assurance cannot be made for claims initiated between 1943, when Hanford was founded, and the late 1950s. Claim-filing procedures in effect at that time required that claims be submitted to the state through the employer. In the late 1950s the claim-filing procedure was revised to require the attending physician to submit part of the Report-of-Accident form directly to the state and a second part to the employer. This procedure was initiated to effectively eliminate the possibility that an employer in the state could unilaterally prevent the filing of a claim with the state.

We found no information to indicate that DOE did not forward employee claims to the state prior to the procedural change. Furthermore, DOE and state officials as well as employee union representatives were not aware

¹ As a self-insurer under the contract, the federal government agreed to establish separate accounts from which the state could withdraw funds to pay compensation claims.

of any Hanford employee being denied the right to file a workers' compensation claim.

Because the Hanford Site was producing plutonium for nuclear weapons, the contract agreement between the Department of Labor and Industries and DOE contained several clauses intended to maintain the secrecy of Hanford's activities. These clauses concerned (1) the information to be provided by DOE to the state on employee claims, (2) government approval of state employees assigned to Hanford claims, and (3) the routing of information to the state. According to state officials, the state employee approval right was never exercised by the government and the remaining contract clauses did not prevent the state from obtaining the information needed to process Hanford claims. All of these clauses have been deleted from the current contract.

Since 1943, Hanford contractor employees have filed 43 radiation-related claims. Forty of these claims were radiation-related injuries of which 39 were approved by the state without objection from DOE, and 1 claim resulted in a settlement outside the provisions of the Washington Industrial Insurance Act. In addition to the 40 injury claims, there were 3 pension claims: 2 filed by the widows of Hanford contractor employees and 1 by a former employee. The state rejected the widows' pension claims after investigating the causes of the deaths. In both cases, the state determined that the cause of death was unrelated to the employee's work environment. The state is reviewing the remaining pension claim.

In November 1990 the state released the results of its review of the DOE/state workers' compensation contract. The report concluded that there is no evidence that the rights of Hanford employees have been violated or compromised as a result of the contract.

Background

In January 1943 the Hanford Site was chosen as the location for the top secret Manhattan Project. Hanford is located in the Columbia Basin region of southeastern Washington State; its mission was to produce plutonium for an atomic bomb. Over the years, the facility has been involved in the entire nuclear cycle, including fuel fabrication, chemical processing, waste management, and research.

Hanford contractor employees, like most employees in the state, are guaranteed compensation if they are injured in an industrial accident or contract an occupational disease. The Washington Industrial Insurance

Act, enacted in 1911, provides that injured workers are to receive "sure and certain relief" promptly, without question of fault, and with a minimum of legal formality. Under the act, the state, rather than a commercial insurance company, collects premiums from employers and workers and deposits the premiums in a state fund; administers workers' claims; and oversees benefits to victims of industrial accidents and illnesses.

State Claim-Filing Procedure

To file a claim for an on-the-job injury or an occupational disease, the employee first obtains a medical diagnosis from a physician. Prior to the late 1950s, the physician completed the medical portion of the Report-of-Accident form (claim form), providing such information as claimant's diagnosis and the degree of probability that the medical condition was caused by the injury or exposure for which the claimant was being treated. The physician then sent the claim form to the employer who, in turn, submitted the claim to the Department of Labor and Industries. Concerned that some employers were not submitting workers' compensation claims to the state, in the late 1950s, the department revised the claim-filing procedure so that the attending physician forwards one part of the claim form directly to the state and a second part to the employer. This change effectively prevented any employer in the state from blocking the submission of workers' compensation claims. State officials emphasized that the change was not directed at DOE, but to all employers in the state.

Once the department receives a claim, the information submitted by the claimant, the attending physician, and the employer is reviewed and compared with state-established criteria for acceptance or rejection. If the information is inadequate to make an informed decision, the Department of Labor and Industries can request additional information or independently investigate the claim. If an employer fails to submit information to the state, the department can still process the claim.

The accept or reject decision, according to state officials, is solely the responsibility of the state and is based only on the medical and factual merits of the case. However, the decision can be appealed by the injured worker, the beneficiary, employer, or any other aggrieved persons within 60 days of the notice of decision. The four levels of appeal are the State Board of Industrial Insurance Appeals, the State Superior Court, the State Court of Appeals, and the State Supreme Court.

DOE's Workers' Compensation Contract With the State

In March 1943 the District Engineer, Manhattan District, U.S. Army Corps of Engineers, and E.I. DuPont De Nemours and Company (the then Hanford Site contractor) entered into a contract with the state of Washington to administer a workers' compensation program for contractor employees at Hanford. Concerned that a radiation catastrophe at Hanford could bankrupt the state compensation/pension fund, the state allowed the federal government to establish the equivalent of a self-insured workers' compensation program to be administered by the state. Under the contract, the federal government was required to establish separate fund accounts from which the state could withdraw funds to pay compensation claims. In addition, the state was to receive compensation for administering the program and monitoring employers' actions to ensure that injured workers receive the benefits to which they are entitled.

When the Atomic Energy Commission (a predecessor agency to DOE) assumed responsibility for administering construction activities at Hanford, a second workers' compensation contract was negotiated between the Commission and the state. This contract, which became effective on January 1, 1953, replaced the 1943 workers' compensation contract and stayed in effect through June 30, 1991, when the contract agreement was terminated and replaced by a new agreement effective July 1, 1991. According to a DOE official, the 1943 contract continued in existence until 1964 to accommodate the claims already filed under that contract.

Because of the secrecy surrounding the development of the atomic bomb, everything associated with the Manhattan Project, including the original workers' compensation contract, was classified as "Secret."² In addition, the workers' compensation contracts also contained the following clauses intended to safeguard the secrecy of classified Hanford activities.

Accident descriptions—To safeguard the disclosure of restricted data, the state agreed to accept descriptions of accidents provided by the DOE contractors even though full details may not be given. This contract clause further provided that if additional information was needed by the Department of Labor and Industries, the matter would be taken up through a conference between DOE and the state and a solution sought that would protect the interests of all parties. According to state investigators, this provision of the contract did not affect the state's ability to obtain the information needed to process the claim. Under the newly

²This contract was eventually declassified in 1958.

signed agreement between the state and DOE, effective July 1, 1991, this clause was deleted from the contract agreement. In fact, the new agreement calls for DOE to endeavor to ensure that the state is provided with full and complete information to enable it to properly perform its function. As in the prior agreement, should the state want additional information, a conference can be convened to find a solution which will protect the interests of all parties.

Government approval of state employees—The original contracts contained a clause that state employees assigned to work on Hanford claims would be subject to the approval of the government. The stated purpose for this clause was to maintain the secrecy of project information and to ensure compliance with national security requirements. According to DOE Richland officials, this approval right was never exercised and the clause was removed from the workers' compensation contracts in 1956.

Routing of information to the state—Under the January 1, 1953, contract, which was later expanded to include all Hanford operations, the state agreed that all accident reports and other material furnished by Hanford contractors or contract physicians and hospitals used to review the claim would be routed through the Atomic Energy Commission to the state. The stated purpose of this clause was for security and claims administration purposes.

In May 1988 DOE changed its policy to require that the day-to-day claims administration of the workers' compensation program be handled by each Hanford contractor. The contractors now submit all claims and support data directly to the state for processing rather than routing them through the DOE Richland Operations Office. Contractors, however, were requested to provide DOE with copies of the information on unique claims or those involving radiation exposure so that DOE's potential liability can be assessed. To eliminate the perception that the routing of information through DOE adversely affects the injured employee's rights, this clause was removed from the new contract agreement that became effective on July 1, 1991. The contract now states that all accident reports and other materials furnished by employers, physicians, or hospitals, if any, will be submitted to the Department of Labor and Industries with a copy to be supplied to DOE.

Radiation-Related Claims Filed by Hanford Workers

As of April 1, 1991, Hanford contractor employees have filed 12,726 workers' compensation claims. Our review of DOE Richland Operations Office and Department of Labor and Industries records indicates that only 43 of these claims involved exposures to radiation. Table 1 shows the type of radiation-related claims that have been filed and whether they were accepted or rejected by the Department of Labor and Industries.

Table 1: DOE Hanford Contractor Radiation-Related Claims

Type of claim	Number	DOE/contractor contested	State accepted
Noncompensatory	39	0	39
Compensatory	1	0	0 ^a
Occupational disease	1	1	0
Widows pension	2	2	0
Total	43	3	39

^aClaimant sought and received compensation from the U.S. government instead of the state-administered program.

As shown in table 1, "noncompensatory" is the largest claims category. These claims represent injuries that do not result in employees losing more than 3 workdays. According to claim records, 26 of the 39 noncompensatory claims involved a radiation exposure incident and were simply submitted to record the incident in the event that a future medical condition should arise as a result of the exposure. The remaining noncompensatory claims usually involved a physical injury, such as a laceration, as well as exposure to radiation. On the basis of information obtained from the state, DOE did not protest the acceptance of any of these claims.

The only compensatory claim,³ according to state records, involved an employee injured during an explosion on August 30, 1976. The employee received nitric acid burns, abrasions, and puncture wounds and received radiation contamination through inhalation and to external parts of the body. State records indicate that a claim was filed but is now classified as inactive. In lieu of seeking a claim under the provisions of the Washington Industrial Insurance Act, the employee and his legal counsel negotiated a settlement with the U.S. government. According to Department of Labor and Industries records, the employee received a cash settlement and medical treatment for life.

³Compensatory claims are those claims involving the loss of more than 3 workdays. The injured worker is eligible for payment of medical bills and for time-loss benefits that are set by law. Payment may also provide for any necessary rehabilitation or job training.

Only two claims were filed for medical conditions attributed to long-term exposure to radiation; however, another claim was filed for radiation exposure relating to a single incident in the 1970s. Two of the three claims were submitted by widows of deceased employees who alleged that radiation exposure was the cause of death. Department of Labor and Industries records show that both of these claims were rejected by the state because the medical facts did not indicate that the medical condition was a result of the worker's employment. The third claim was filed by a former Hanford employee who attributes his contraction of leukemia to radiation exposure over a period of years. The department rejected this claim on the basis that the condition was not the result of the exposure alleged, and that the claim was not filed within the state's time limitations. The claimant, however, appealed the decision to the state Board of Industrial Insurance Appeals. As of June 1, 1991, the Board had not determined whether the rejection of the claim was proper.

Although the number of claims appears small, our review of state and DOE workers' compensation claim records did not disclose any instances in which DOE denied an injured employee the right to file a compensation claim. However, the possibility did exist that this could have occurred in the 1940s and 1950s before the multi-part claim form was introduced. DOE Richland Operations Office, Hanford contractors, and employee union officials we interviewed, however, said that they had not received any complaints from employees that they were unable to file a workers' compensation claim. Further, a department official commented that, even if an employee did not file a claim in the past, a claim can still be made if a medical condition arises as a result of past radiation exposure. Under Washington State law, the employee has 2 years in which to file an occupational disease claim after receiving written notice from a physician that the disease exists and that a claim for benefits may be filed.

State Review of the Hanford Workers' Compensation Program

In response to concerns raised by the media and workers' rights groups about the Hanford workers' compensation program, the state reviewed its contract with DOE as well as its administration of the program. The study, released in November 1990, concluded that

Throughout our review, we could not find evidence that the rights of a Hanford employee under the Washington Workers' Compensation statute have been violated or compromised as a result of the contract at issue. As emphasized earlier, the decisions on Hanford claims are an L&I [Labor and Industries] responsibility and are made on a factual/medical basis. While DOE retains the same right to protest or appeal L&I's decisions, as does any

other employer insured under L&I, it does not have the authority to reverse or alter that determination. Information that it submits is taken into consideration but does not direct the ultimate determination.

Conclusions

We believe that the rights of Hanford Site contractor employees to file workers' compensation claims are being adequately protected under the DOE contract with the Washington State Department of Labor and Industries. DOE or the DOE contractor, like any employer in the state, has the right to provide information to the state which contradicts the employee's claim and to protest or appeal the state's decision. However, the decision to accept or reject a claim rests solely with the state and is based on the factual and medical merits of the case. We found nothing during our review that would indicate otherwise.

Until the late 1950s the claim-filing process then in effect could have allowed an employer to block the filing of a claim. However, in our review we found no indication that DOE had prohibited any employee from filing a claim. Furthermore, even if a claim was not submitted, a claim can still be made if a medical condition arises as a result of past radiation exposure.

As requested by your office, we did not obtain official agency comments on a draft of this report. However, we discussed the facts presented in the report with DOE program and contractor officials as well as Washington Department of Labor and Industries officials. Both agencies generally concurred with the facts.

We performed our review between January and May 1991 in accordance with generally accepted government auditing standards. To determine whether workers' rights are adequately protected, we reviewed (1) the contracts between DOE and the Washington Department of Labor and Industries, (2) the state procedures for initiating and assessing a workers' compensation claim, and (3) all radiation-related claims submitted to the state. In addition, we reviewed the Washington State Department of Labor and Industries' November 1990 study of the state claims process and its administration and interviewed state claims investigators, DOE and contractor officials responsible for workers' compensation claims, and employee union officials.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from

the date of this letter. At that time, we will provide copies to DOE and other interested parties upon request.

If you have any additional questions or if we can be of further assistance, please contact me at (202) 275-1441. Major contributors to this report are listed in appendix I.



Victor S. Rezendes
Director, Energy Issues

Major Contributors to This Report

Resources,
Community, and
Economic
Development Division,
Washington, D.C.

Judy A. England-Joseph, Associate Director
James Noel, Assistant Director
Edward E. Young, Jr., Assignment Manager
Frederick A. Harter, Evaluator-in-Charge

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